



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC 20460

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September 19, 1989

ENVIRONMENTAL PROTECTION AGENCY
REGION IX
HEARING CLERK
OFFICE OF
THE ADMINISTRATIVE
LAW JUDGES

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CERTIFIED MAIL--RETURN RECEIPT REQUESTED

David M. Jones, Esquire
Office of Regional Counsel
U.S. EPA, Region IX
215 Fremont Street
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Aluminum Company of America
1501 Alcoa Building
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Subject: Aluminum Company of America
Docket No. TSCA-09-89-0015

To the Parties:

As you have been previously notified, I have been designated by order of the Chief Administrative Law Judge, dated September 14, 1989, to preside in this proceeding under the Toxic Substances Control Act, Section 16(a), 15 U.S.C. 2615(a).

Agency policy encouraging settlement is expressed in the rules of practice governing these proceedings, 40 C.F.R. 22.18(a), and you may be attempting to settle this matter. Counsel for the Complainant is requested to file in this proceeding by November 6, 1989, a statement with respect to whether a settlement has been reached or the status of settlement negotiations.

If the case is not settled by that date, I propose to accomplish by this letter some of the purposes of a prehearing conference, as permitted by the rules of practice, 40 C.F.R. 22.19(e).

Accordingly, it is directed that the following prehearing exchange take place:

By Complainant and Respondent

1. As required by the rules of practice, 40 C. F. R. 22.19(b), each party shall submit the names of the expert and other witnesses intended to be called at the hearing with a brief narrative summary of their expected testimony, and copies of all documents and exhibits intended to be introduced into evidence. The documents and exhibits shall be identified as "Complainant's" or "Respondent's" exhibit, as appropriate, and numbered with Arabic numerals (e.g., Complainant's Ex. 1).
2. Each party shall submit its views as to the place of hearing. See the rules of practice, 40 C.F.R 22.21(d) and 22.19(d).

To the extent not covered by the foregoing, the following should also be submitted:

By Complainant

1. Submit a copy of the inspection report together with all the attachments thereto.
2. State the Complainant's position as to the matters alleged in paragraphs 3 and 5 of Respondent's answer to Count I alleging that the hydraulic systems have not been operated at the Facility since the enactment of TSCA.
3. State the Complainant's position as to the matters alleged in paragraphs 2 and 4 of Respondent's answer to Count II denying that Alcoa is subject to the requirements of TSCA and the implementing regulations cited because any PCB contamination from these systems occurred prior to the enactment of TSCA and therefore Alcoa is not in violation of TSCA as a result of such contamination.
4. State the Complainant's position as to the matters alleged in paragraphs 2 and 5 of Respondent's answer to Count III denying that the forge press had been stored for disposal and alleging that it had been stored instead for sale.
5. Submit copies of the PCB annual documents for calendar years 1983 through 1987 and summarize the evidence claimed to support the violations alleged in paragraph 4 of Count IV of the complaint.
6. Show how the proposed penalty conforms to the TSCA Civil Penalty Guidelines and the PCB Penalty Policy, 45 Fed. Reg. 59770, 59776.

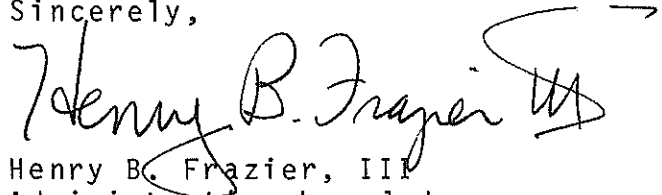
By Respondent

If Respondent intends to contest the proposed penalty on the grounds that it is unable to pay the proposed penalty, or that payment will have an adverse effect on Respondent's ability to continue to do business, furnish certified copies of Respondent's statement of financial position (or in lieu thereof copies of Respondent's federal tax return) for the last fiscal year.

If the case is settled, the Consent Agreement and Final Order signed by the parties should be submitted no later than December 4, 1989. If a Consent Agreement and Final Order have not been signed by that date, the prehearing exchange directed above should be made on December 4, 1989. The parties will be expected to make this prehearing exchange unless prior to the due date an extension of time has been obtained pursuant to 40 C.F.R. 22.07(b). The parties will then have until December 14, 1989 to reply to statements or allegations of the others contained in the prehearing exchange.

The original of the responses and replies shall be sent to the Regional Hearing Clerk, and copies, with any attachments, shall be sent to the opposing party and to this office. If photographs are to be submitted in the prehearing exchange, the party submitting such photographs should provide the actual photograph to all parties concerned in the proceeding (copies reproduced on a duplicating machine will not be acceptable). Upon receipt of the requested responses and the replies, consideration will be given as to whether further correspondence is desirable or whether the matter will be scheduled for a hearing.

Sincerely,

A handwritten signature in dark ink, reading "Henry B. Frazier, III". The signature is written in a cursive style with a large, sweeping "H" and a stylized "F". There is a small mark to the right of the signature, possibly a checkmark or a flourish.

Henry B. Frazier, III
Administrative Law Judge

IN THE MATTER OF Aluminum-Company of America
Docket No. TSCA-09-89-0015

CERTIFICATE OF SERVICE

I hereby certify that the original of this prehearing exchange letter was mailed to the Regional Hearing Clerk, United States Environmental Protection Agency, Region IX and copies were mailed CERTIFIED MAIL, RETURN RECEIPT REQUESTED to counsel for Complainant and Respondent in this proceeding.

Gladys A. Bryant
Gladys A. Bryant
Secretary

DATED: *September 19, 1989*
Washington, D.C.